

UNITED STATES DISTRICT COURT OF NEW YORK
EASTERN DISTRICT

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JOHN SIMPSON,

Plaintiff,

PETITION FOR REMOVAL

-against-

CVS ALBANY, L.L.C. and
LIBERTY COCA-COLA BEVERAGES LLC,

Defendants.

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Defendant, CVS ALBANY, L.L.C., petitioner for the removal of this action from the Supreme Court of the State of New York, County of Suffolk, to the United States District Court, Eastern District of New York, respectfully shows this Honorable Court:

FIRST: Plaintiff commenced an action against the above named Defendant in a Civil Action brought against it in the Supreme Court of the State of New York, County of Suffolk, entitled:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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JOHN SIMPSON ,

Index No: 605121/2022

Plaintiff,

-against-

CVS ALBANY, L.L.C. and
LIBERTY COCA-COLA BEVERAGES LLC,

Defendants.

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A copy of the Summons and Complaint in this action is annexed hereto as **Exhibit "A"** and made a part hereof. Defendant, CVS Albany, L.L.C. served an answer dated July 5, 2022. (**Exhibit "B"**). Defendant, Liberty Coca-Cola Beverages LLC served an answer dated July 31, 2022. (**Exhibit "C"**). Thereafter on August 30, 2022, the plaintiff e-filed/served their Bill of Particulars and Reply to Demand for Total Damages alleging damages in the amount of \$1,000,000.00. (**Exhibit "D"**).

SECOND: Upon information and belief, the foregoing constitutes all process, pleadings and orders allegedly served upon the parties in this action.

THIRD: This is an action of a civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the Plaintiff and the Defendants and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interests and costs. Accordingly, there exists jurisdiction in the District Court of the United States as provided in 28 U.S.C. §1332.

FOURTH: As of December 27, 2021, CVS ALBANY, L.L.C., operated a store located at 1944 Deer Park Avenue, Deer Park, New York. CVS ALBANY, L.L.C. is a wholly owned subsidiary of CVS PHARMACY, INC. which is a wholly owned subsidiary of CVS Health Corporation.

FIFTH: Under the provisions of 28 U.S.C. §1441, the right exists to remove this civil action from the Supreme Court of the State New York, County of Suffolk to the United States District Court for Eastern District of New York, which embraces the place where this action is pending. In the Summons and Complaint, Plaintiff JOHN SIMPSON seeks judgment as a result of an accident that occurred when Plaintiff allegedly tripped and fell on December 27,

2021 at the premises located at 1944 Deer Park Avenue, Deer Park, New York, in the County of Suffolk.

SIXTH: The action involves a controversy between citizens of different States. Upon information and belief, the Plaintiff is, and was at the commencement of the action, a citizen of the State of New York, County of Suffolk. Defendant CVS ALBANY, L.L.C. is a domestic limited liability company having been registered in the State of New York. The citizenship of a limited liability company is determined by the citizenship of its members. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 110 S.Ct. 1015 (1990); *Quantlab Fin., LLC, Quantlab Tech. Ltd. (BVI) v Tower Research Capital, LLC*, 715 F Supp 2d 542 (S.D.N.Y. 2010). CVS PHARMACY, INC. is the sole member of Defendant CVS ALBANY, L.L.C. and is a foreign business corporation at all times having its principal place of business at One CVS Drive, Woonsocket, Rhode Island, 02895, and having been registered as a corporation in the State of Rhode Island. As such, the Defendant, CVS ALBANY, L.L.C., has Rhode Island citizenship for purposes of diversity jurisdiction. CVS PHARMACY, INC. is wholly owned subsidiary of CVS Health Corporation. CVS Health Corporation has no parent corporation and no publicly held corporation owns 10 percent or more of CVS Health Corporation's stock. The principal place of business of CVS PHARMACY, INC. and CVS Health Corporation is One CVS Drive, Woonsocket, Rhode Island 02895. As such, Defendant, CVS PHARMACY, INC., has Rhode Island citizenship for purposes of diversity jurisdiction.

SEVENTH: The codefendant, Liberty Coca-Cola Beverages LLC is a foreign limited liability company registered in the state of Delaware with a registered agent located at 251 Little Falls Drive, Wilmington, Delaware. The New York Department of State Division of Corporations Entity Information and the State of Delaware Entity Details are annexed hereto

collectively as **Exhibit “E”**. Liberty Coca-Cola Beverages LLC’s counsel has consented to the removal of this case to the United States District Court for the Eastern District of New York.

EIGHTH: Upon information and belief, Plaintiff’s amount in controversy exceeds the \$75,000.00 threshold. Plaintiff’s Complaint does not specify the amount of damages because under New York State CPLR §3017(c), a plaintiff in a personal injury matter filed in the Supreme Court of the State of New York is not permitted to assert the damages amount in the Complaint. However, plaintiff served a Reply to Demand for Total Damages, whereby the plaintiff asserts a claim for damages for permanent personal bodily injury, pain and suffering in the sum of \$1,000,000.00. (**Exhibit “D”**). Therefore, the amount in controversy exceeds \$75,000.00 and the District Court has jurisdiction over this action.

NINTH: In accordance with the requirements of 28 U.S.C. Section 1446 this Petition for Removal is filed within thirty (30) days after receipt of the Reply to Demand for Total Damages, which was e-filed by plaintiff on August 30, 2022. (**Exhibit “D”**).

TENTH: In accordance with the requirements of 28 U.S.C. Section 1446 Defendant attaches herewith and incorporates herein by reference copies of the following items served in this action:

- a. Plaintiff’s Summons and Complaint against DefendantS for damages filed in the Supreme Court of the State of New York, County of Suffolk bearing index number 605121/2022. (**Exhibit “A”**).
- b. CVS Albany, L.L.C.’s answer dated July 5, 2022. (**Exhibit “B”**).
- c. Defendant, Liberty Coca-Cola Beverages LLC’s answer dated July 31, 2022. (**Exhibit “C”**).

- d. Plaintiff's Bill of Particulars and Reply to Demand for Total Damages alleging damages in the amount of \$1,000,000.00. (**Exhibit "D"**).
- e. New York and Delaware Department of State entity search results relating to Liberty Coca-Cola Beverages LLC. (**Exhibit "E"**).

ELEVENTH: By reason of the foregoing, Defendant desires and is entitled to have this action removed from the Supreme Court of the State of New York, County of Suffolk to the United States District Court for the Eastern District of New York, such being the district where this suit is pending.

TWELFTH: Concurrent with the filing of service and petition for removal, Defendant is serving this petition for removal upon the Plaintiff and filing a copy of this petition for removal with the Clerk of the Court for the Supreme Court of the State of New York County of Queens.

WHEREFORE, defendant, CVS PHARMACY, INC., prays that the above-entitled action now pending against it in the Supreme Court of the State of New York, County of Queens be removed there from that Court.

Dated: Garden City, New York
September 19, 2022

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